

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Amboy, California)

MB Docket No. 02-124
RM-0446

TO: John A. Karousos
Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

OPPOSITION TO MOTION FOR LEAVE TO FILE RESPONSE

Infinity Radio Operations, Inc. ("Infinity"). licensee of FM radio station KMXB, Henderson Nevada, by its attorneys, hereby opposes the Motion For Leave To File Response filed by Cameron Broadcasting, Inc. ("Cameron") on December 31, 2002. This Opposition is timely filed pursuant to Sections 1.4(h) and 1.45(b) of the Commission's Rules. In support of this Opposition, Infinity respectfully states as follows:

This case involves the legitimate rulemaking proposal made by KHWY, Inc., to allot Channel 237A to Amboy, California, and a defective counterproposal submitted by Cameron. On November 6, 2002, Infinity filed a Motion To Dismiss Cameron's counterproposal; Cameron filed an opposition to that motion on November 20, 2002; and Infinity filed a reply to the opposition on December 10, 2002, thereby completing the authorized pleading cycle.

On December 31, 2002, three weeks after the pleading cycle closed, Cameron filed a Motion for Leave to File Response, citing an alleged need "to set the record

straight,” and a pleading titled Response To Reply (ToCorrect The Record). Cameron’s excuses for filing an extra pleading are nothing more than contrived irrelevancies, which, if permitted to expand the pleading cycle here, will create an unlimited precedent for doing so in all future cases. Indeed, with every additional word it submits, Cameron further proves the Commission’s principle that defective counterproposals waste Commission resources and must be foreclosed. Cameron’s request to file a normally unauthorized pleading must be denied.

At the outset, it must be made clear that nothing in Cameron’s proffered Response alters any of the multiple defects in its counterproposal. That dispositive fact noted, the following addresses the particular allegations of “record straightening” that Cameron advances:

1. Cameron first purports “to correct” the record by stating that “Infinity’s suggestion of some lack of diligence on Cameron’s part is flatly wrong.” Response at 2. However, the record clearly shows that, on October 23, 2001, the Commission released a Public Notice, Repoi-INo. 2506, reporting the filing of Marathon’s Tecopa counterproposal and setting a date for reply comments on November 7, 2001. Accordingly, the Tecopa proposal was plainly a matter of public knowledge when Cameron filed its counterproposal on July 15, 2002. Cameron does not specify and Infinity does not know what database failed to reference the Tecopa proposal and public notice when Cameron filed. But one thing is clear — the kind of intemperate response that Cameron seeks leave to file is irrelevant to the merits and does not justify allowance of an unauthorized pleading.

2. Cameron next purports "to correct" the record as to Infinity's assertion that the Commission "summarily" dismissed the FERN counterproposal because the dismissal occurred "*more than a year*" (bold and italics in Cameron's original) after it was filed. Response at 2-3. However, contrary to Cameron's assertions, the term "summary" has a substantive, as well as temporal, wise. A summary dismissal can be a brief statement or account covering the main points, one that is without formality. The Commission's treatment of the FERN counterproposal was summary in that the Commission found the counterproposal so unworthy of consideration that it dismissed the counterproposal, without even putting it out for public comment.

3. Cameron's next "correction" is to note that Marathon's counsel had "*actual knowledge*" (bold and italics again in Cameron's original) of the FERN counterproposal because its counsel had previously urged that counterproposal's dismissal. Response at 3-4. To the extent that Cameron's argument is suggesting that Marathon's counsel filed the Tecopa proposal in bad faith, it is an *ad hominem* attack on a respected member of the bar that has no place in any Commission proceedings, no less as a justification to file an unauthorized pleading. The fact that Marathon's counsel had previously opposed the FERN counterproposal on behalf of a different client did not preclude him from relying on the Commission's database as it stood at the time he filed Marathon's Tecopa proposal.

4. In the same vein, Cameron seeks leave to "to correct" the record to note that Infinity's counsel submitted comments in the Parker, Arizona, rulemaking proceeding regarding the FERN counterproposal. Response at 4. However, the happenstance that Infinity's counsel was also involved in Parker, Arizona, has no

significance here. In any event, Infinity's counsel was uninvolved in the Tecopa proceeding and did not know of the relationship that Cameron is drawing between the Tecopa and FERN proposals.

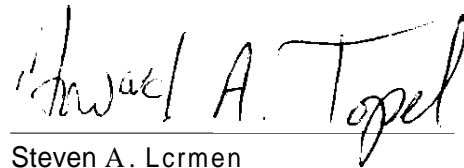
Finally, Infinity notes that the very recent decision in Wisner, Ruston, Clayton, and Saint Joseph, Louisiana, Docket No. 01-19, released January 8, 2003, applies a bright line test on short-spaced counterproposals that compels dismissal of Cameron's counterproposal. In Wisner, a pending counterproposal that was obviously and fatally short-spaced to an existing station was still found to block that existing station's subsequently filed upgrade counterproposal in a separate proceeding.

For the foregoing reasons, the Commission should deny Cameron's Motion For Leave To File Response and proceed expeditiously to resolve this proceeding on the record made.

Respectfully submitted,

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January 15, 2003

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CERTIFICATE OF SERVICE

I, Joan M. Trepal, a secretary in the law firm of Leventhal Senter & Lerman PLLC, hereby certify that on this 15th day of January, 2003, caused copies of the foregoing "Opposition to Motion For Leave to File Response" to be placed in the U.S. Postal Service, first class postage prepaid, addressed to the following persons:

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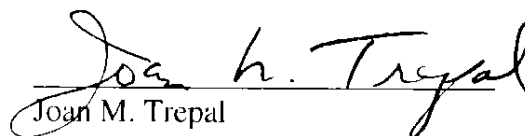
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